

UNITED STATES DISTRICT COURT  
IN AND FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

JAMES ALLEN SCHNEIDER,

Plaintiff,

vs.

HY-VEE FOOD STORES, INC.,

Defendant.

No. 4-00-CV-20274

**INITIAL JURY INSTRUCTIONS**

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## **INSTRUCTION NO. \_\_\_\_**

Members of the jury, we are about to begin the trial of the case about which you have heard some details during the process of jury selection. There are certain instructions you should have in order to understand what will be presented before you, and how you should conduct yourselves during the trial. Later I will give you further instructions. All instructions - both those I give you now, and any I give you later - are equally binding on you and must be followed. Do not single out some instructions and ignore others, because all the instructions are important. In considering these instructions, you will attach no importance or significance whatsoever to the order in which they are given.

By your verdict you will decide disputed issues of fact. I will decide all questions of law that arise during the trial, and before you retire to deliberate at the close of the case, I will again instruct you on the law that you must follow and apply in deciding your verdict.

To decide the facts of this case, you should give careful attention to the testimony and evidence presented. I will instruct you concerning the manner in which you should determine the credibility, or "believability," of each witness and the weight to be given to testimony. During the trial you should keep an open mind, and should not form or express any opinion about the case one way or the other, until you have heard all the testimony and evidence, the closing arguments of the lawyers, and my instructions to you on the applicable law.

You must not discuss the case in any manner among yourselves or with anyone else, nor should you permit anyone to discuss it in your presence. You should avoid reading newspaper articles that might be published about the case, and should also avoid seeing or hearing any television or radio comments about the trial. Do not do any research or make any investigation about the case on your own. Do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

The attorneys have a duty to object when they believe evidence is not admissible. You should not show prejudice against an attorney or client because the attorney has made objections. You should not think that due to any ruling or other comment I may make or question I ask of anyone, that I have any opinions on the merits of the case favoring one side or the other. If I sustain an objection to a question that goes unanswered by the witness, you should not draw any inferences or conclusions from the question itself.

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

**INSTRUCTION NO. \_\_\_\_**

Members of the jury:

This is a civil case brought by the plaintiff, James Allen Schneider, against the defendant, Hy-Vee Food Stores, Inc. On June 3, 1998, Plaintiff was on a scissor lift owned by Defendant Hy-Vee and located at the company's warehouse in Chariton, Iowa. The scissor lift collapsed, and Plaintiff was injured. Plaintiff alleges that Defendant was negligent with respect to the scissor lift, and that Defendant's negligence caused Plaintiff's injuries. Plaintiff seeks damages as a result of Defendant's alleged negligence.

Defendant denies that it was negligent with respect to the scissor lift, or that Plaintiff was injured to the extent he claims.

This summary is given to you by the Court and is not to be considered as evidence in this case. Determine the questions submitted to you from the evidence and apply the law that I will give you.

**INSTRUCTION NO.\_\_\_\_**

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the parties, without bias or prejudice as to any party. Do not be governed by sympathy, prejudice, or public opinion.

The parties to this lawsuit are an individual and a business corporation. All parties are equal before the law, and are entitled to the same fair and conscientious consideration by you. All the parties and the public expect that, regardless of the consequences, you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict.

**INSTRUCTION NO.\_\_\_\_**

The trial will proceed in the following order:

After I finish these initial instructions, the lawyers may make opening statements.

An opening statement is not evidence, but is simply a summary of what the lawyers expect the evidence to be. The plaintiff may then present evidence, and counsel for the defendant may cross-examine. Following the plaintiff's case, the defendant may present evidence, and the plaintiff's counsel may cross-examine. Following the defendant's case, the plaintiff may present additional evidence.

After the parties have presented their cases and the evidence is concluded, I will further instruct you.

After presentation of the evidence is completed, and I have further instructed you on the law, the lawyers will make closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence.

You will then retire to deliberate on your verdict.

## **INSTRUCTION NO. \_\_\_\_**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to see or hear the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the age and manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness and probability or improbability of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You should consider whether a contradiction is an innocent misrecollection or lapse of memory, or an intentional falsehood. This may depend on whether the contradiction has to do with an important fact or only a small detail.

If you believe from the evidence that a witness previously made a statement that is inconsistent with the witness's testimony at this trial, the only purpose for which you may consider the previous statement is for its bearing on the witness's credibility. It is not evidence that what the witness previously said was true. However, if you believe from the evidence that a witness who is a party made a previous statement that is inconsistent with the party's testimony at this trial, you may consider the previous statement both for its bearing on the party's credibility and as evidence that what the party previously said was true.

You will hear testimony from persons described as experts. Persons who, by knowledge, skill, training, education, or experience, have become experts in some field may state their opinions on matters in that field and the reasons for their opinions.

Expert testimony should be considered just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the

witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

Expert witnesses are asked to assume certain facts are true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question is not proved by the evidence, you should decide if that omission affects the value of the opinion.

**INSTRUCTION NO. \_\_\_\_**

You shall base your verdict only on the evidence and these and other instructions that I give you during the trial. Evidence is:

1. Testimony in person or testimony previously given, which includes depositions.
2. Exhibits received by the Court.
3. Stipulations that are agreements between the parties.
4. Any other matter admitted into evidence.

Evidence may be direct or circumstantial. You should not be concerned with these terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide. The following are not evidence:

1. Statements, arguments, comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I tell you to disregard.
4. Anything you see or hear about this case outside the courtroom.



**INSTRUCTION NO.\_\_\_\_**

Plaintiff and Defendant have agreed to certain facts and have reduced these facts to a written agreement or stipulation. Any counsel may, throughout the trial, read to you all or a portion of the stipulated facts. You should treat these stipulated facts as having been proved.

**INSTRUCTION NO. \_\_\_\_**

Unless otherwise instructed, your verdict depends on whether you find certain facts have been proved by a preponderance of the evidence. To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence, and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that the issue has been proved.

The preponderance of the evidence is not determined by the greater number of witnesses or exhibits a party has presented.

You may have heard the term, “proof beyond a reasonable doubt.” That is a stricter standard, which applies only in criminal cases. It does not apply in civil cases such as this.

**INSTRUCTION NO. \_\_\_\_**

During the trial of this case, certain deposition testimony may be read into evidence. A deposition is taken before trial. It consists of questions asked the witness and the witness's answers given under oath. Deposition testimony is preserved in writing. You should consider deposition testimony the same as you would testimony given in court.

During this trial, you may hear the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

You may hear evidence claiming that Plaintiff and/or Defendant and its employees made statements before this trial while under oath. These statements are called admissions. If you find an admission was made, you may consider it as if made during this trial. Decide whether to consider the admission for any purpose, and what weight to give it.

**INSTRUCTION NO.\_\_\_\_**

During the course of the trial, I occasionally may ask questions of a witness or counsel. Do not assume that I hold any opinion on the matters to which my questions may relate. Neither in these instructions nor in any ruling, action, or remark that I make during this trial do I intend to give any opinion or suggestion as to what the facts are or what your verdict should be.

**INSTRUCTION NO.\_\_\_\_**

During this trial I will permit you to take notes, so a word of caution is in order. There is a tendency to attach undue importance to matters that one has written down. Some testimony that is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial, in light of all the evidence presented. Your notes are only a tool to aid your own individual memory. You should not compare your notes with the notes of other jurors in determining the content of any testimony, or in evaluating the importance of any evidence. Your notes are not evidence, and will not be a complete outline of the proceedings. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and the court reporter cannot read back testimony. You must pay close attention to the testimony as it is given.

**INSTRUCTION NO.\_\_\_\_**

You will not be required to remain together while court is in recess. It is important that you obey the following instructions with reference to court recesses:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. In fairness to the parties to this lawsuit, you should keep an open mind throughout the trial. You should reach your conclusion only during your final deliberations after all evidence is in and you have heard the attorneys' summations, my instructions to you on the law, and an interchange of views with other jury members.

Second, do not permit anyone to discuss the case in your presence. If anyone does so despite your telling them not to, report that fact to the Court as soon as you are able. If you feel it necessary to bring a matter to the attention of the Court, do not discuss this matter with other jurors.

Third, please do not speak, in or out of the courtroom, with any of the parties, their attorneys, or any witness, about the case, or at all, even to pass the time of day. In no other way can all parties be assured of the absolute impartiality they are entitled to expect from you as jurors.

**INSTRUCTION NO.\_\_\_\_**

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as James Schneider is 32 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Plaintiff's prior health, habits, occupation, and lifestyle, when deciding issues of future damages.

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No. 4-00-CV-20274

**ADDITIONAL JURY INSTRUCTIONS**

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**INSTRUCTION NO. \_\_\_\_**

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together, because no one instruction includes all of the applicable law. Remember to review the initial instructions in addition to these instructions. You must not single out some instructions and ignore others, because all are important. This is true even though those I gave you at the beginning of, or during, the trial are not repeated here.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices, or emotions.

**INSTRUCTION NO. \_\_\_\_**

Plaintiff must prove all of the following propositions:

1. Defendant was negligent in one or more of the following ways:
  - a. in failing to properly inspect the scissor lift;
  - b. in failing to properly maintain the scissor lift;
  - c. in failing to have a maintenance manual for the scissor lift;
  - d. in failing to train its employees how to inspect and maintain the scissor lift;
  - e. in failing to provide a safe workplace.
2. The negligence was a proximate cause of damage to Plaintiff.
3. The amount of damage.

If Plaintiff has proved all of these propositions, Plaintiff is entitled to damages in some amount.

“Negligence” means failure to use ordinary care. Ordinary care is the care that a reasonably careful person would use under similar circumstances. “Negligence” is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

You have received evidence of ANSI and OSHA standards with respect to scissor lifts. Compliance with ANSI and OSHA standards is evidence that Defendant was not negligent, and non-compliance with ANSI and OSHA standards is evidence that Defendant was negligent. Such evidence is relevant and you should consider it, but it is not conclusive proof.

**INSTRUCTION NO.\_\_\_\_**

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct.

“Substantial” means the party’s conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

**INSTRUCTION NO. \_\_\_\_\_**

The defendant claims the sole proximate cause of the plaintiff's damages was a condition not under the control of any party. Sole proximate cause means the only proximate cause. The defendant must prove both of the following propositions:

1. The condition was not under the control of any party; and
2. The condition, which was not under the control of any party, was the only proximate cause of the plaintiff's damage.

If the defendant has failed to prove either of these propositions, the defendant has failed to prove the defense of sole proximate cause. If the defendant has proved both of these propositions, the defendant has proved the defense of sole proximate cause and the plaintiff may not recover damages, and you should answer "no" on Special Verdict Form Question No. 1.

## INSTRUCTION NO. \_\_\_\_\_

If you find in favor of Plaintiff James Schneider, then you must award him such sum as you find by the preponderance of the evidence will fairly and justly compensate him for any damages he sustained as a proximate result of Defendant's wrongful actions. You should consider the following items of damages claimed by Plaintiff James Schneider:

1. The reasonable value of necessary hospital charges, doctor charges, prescriptions and other medical services from the date of the injury to present time.
2. Loss of function of the body from the date of injury to the present time. Loss of function of the body is the inability of a particular part of the body to function in a normal manner.
3. Physical and mental pain and suffering from the date of injury to the present time. Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.
4. The reasonable value of lost wages from the date of injury to the present time.
5. Present value of future loss of function of the body.
6. Present value of future physical and mental pain and suffering.
7. The present value of reasonable and necessary hospital charges, doctors charges, prescriptions and other medical services that will be incurred in the future.

The amount you determine, if any, for some items of damage cannot be measured by any exact or mathematical standard. You must use your sound judgment based on an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by Defendant as proved by the evidence.

A party cannot recover duplicative damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

The amounts, if any, you find for each of the above items will be used to answer the special verdict.

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance that, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses.

**INSTRUCTION NO. \_\_\_\_\_**

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage, and agreeing in advance that the average of those estimates shall be your item of damage.

**INSTRUCTION NO. \_\_\_\_**

I am giving you a verdict form. Once you have finished responding to the issues in the verdict form, the form should be signed by the person you have selected to serve as presiding juror.

Your response to each of the special interrogatories must represent the considered judgment of each juror. Your verdict must be unanimous. When you have agreed upon an appropriately signed verdict, you will inform the Court Security Officer outside the room.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of the other jurors or for the mere purpose of returning a verdict.

You are to follow all of the instructions in your deliberations. You are not to be concerned with the wisdom of any rule of law. Regardless of your opinion as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of law than that given in the instructions of the Court.

From the evidence you will decide what the facts are. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

**INSTRUCTION NO. \_\_\_\_**

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members to act as Presiding Juror. The person so elected is responsible for the orderly, proper, and free discussion of the issues by any juror who wishes to express his or her views. He or she will supervise the balloting and sign the form or forms of verdict that are in accord with your decision and will also sign any written inquiries addressed to the Court.

Your verdict must be based solely on the evidence and on the law that I give you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide.

Requests regarding instructions are not encouraged. Questions regarding the law are normally fully covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court. If you need to communicate with me during your deliberations, you may send to me -- through the Court Security Officer -- a note signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone -- including me -- how your votes stand numerically.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering a jury room, to announce an emphatic opinion in a case, or a determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans. You are judges -- judges of the facts. Your sole interest is to ascertain the truth.

Dated at \_\_\_\_ a.m./p.m. on this \_\_\_\_ day of November, 2001.



CELESTE F. BREMER  
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT  
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JAMES ALLEN SCHNEIDER,

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No. 4-00-CV-20274

**SPECIAL VERDICT FORM**

We find the following verdict on the questions submitted to us:

**QUESTION NO. 1:** Has Plaintiff proved that Defendant was negligent, and that the negligence was a proximate cause of damage to Plaintiff?

Answer "yes" or "no."

ANSWER: \_\_\_\_\_

(If your answer is "no," stop here, answer no further questions, and have your Presiding Juror sign and date this form because you have completed your deliberations. If your answer is "yes," please answer Question No. 2.)

**QUESTION NO. 2:**

State the amount of damages sustained by Plaintiff James Schneider for each of the following items of damage. If Plaintiff James Schneider has failed to prove any item of damage, enter 0 for that item.

- |  |                                     |                  |
|--|-------------------------------------|------------------|
| 1.                                       | Past medical expenses               | \$_____          |
| 2.                                       | Future medical expenses             | \$_____<br>_____ |
| 3.                                       | Past pain and suffering             | \$_____          |
| 4.                                       | Future pain and suffering           | \$_____<br>_____ |
| 5.                                       | Past loss of function of the body   | \$_____<br>_____ |
| 6.                                       | Future loss of function of the body | \$_____<br>_____ |
| 7.                                       | Past lost wages                     | \$_____<br>_____ |
| TOTAL (add the separate items of damage) |                                     | \$_____<br>_____ |

We reach this special verdict on the \_\_\_\_\_ day of November, 2001, at the hour of \_\_\_\_\_ o'clock, \_\_\_\_ m.

\_\_\_\_\_  
PRESIDING JUROR